IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4047 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAIYALAL P JOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4047 of 1993

MS MAYA S DESAI for Petitioner

MR PRADIP BHATE A.G.P. for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/04/2004

ORAL JUDGEMENT

This petition is filed by the retired Executive Engineer of Narmada Water Resources and Research Department, for quashing the order passed by the

respondent dated 5th February, 1993 and also order dated 7th November, 1992 which are annexed to the petition at annexures-D & B respectively.

1.1. The grievance of the petitioner is that by the said orders, his request to continue him in the service on the basis of his correct birth date which was reflected from the document that was produced before the authorities, was wrongly turned down.

1.2. It is the say of the petitioner that he joined the service of the State Government on 7th June, 1958. In June, 1985, he was serving as Deputy Executive Engineer in Water Resources and Research Department of the respondent. On 20th September, 1985, he made an application to the Executive Engineer, requesting him for correction of birth date in the service record. According to him, in the service record, birth date was mentioned as 6th July, 1935 which was incorrect, but the correct birth date was 10th November, 1936. His application was based on the ground that he being a resident of village Chavad in Lathi Taluka, he visited that place on the occasion of demise of his uncle. When he went there, while searching his ancestral house, he came across a document which appeared to be his birth certificate wherein his birth date was mentioned as 10th November, 1936. He, therefore, requested his Superior Officer to make necessary change in his service record. Alongwith the said application he also forwarded certified copy of the Extract of Birth Register to support his case. His application was however, turned down by the concerned officer vide order dated 6th August, 1991. Against the said order, the petitioner preferred petition being Special Civil Application No. 384 of 1992, before this Court. The same was ultimately, disposed of by this Court (Coram : J.M. Panchal, J.) vide order dated 30th April, 1992, whereby the impugned order namely, order dated 6th August, 1991 was quashed and set aside and the respondent was directed to reconsider the application on its merits.

1.3. Pursuant to the direction issued by this Court, the concerned Officer granted personal hearing to the petitioner and after considering the issue in detail, the application was rejected vide order dated 7th November, 1992. However, the petitioner made another application dated 18th November, 1992, which was again dismissed. The petitioner was intimated about the decision by letter dated 5th February, 1993. Both these decisions are now challenged in this petition. It may be noted here that the petitioner has in the meanwhile retired from the

service on 31st July, 1993.

2. Ms. Maya Desai learned advocate appearing for the petitioner has submitted that the petitioner's applications have been wrongly turned down by the respondent though there is reliable, authentic document in the form of Extract of Birth Register, showing the correct date of birth of the petitioner. According to her, the correct date of birth of the petitioner was 10th November, 1936 and not 6th July, 1935 as indicated in the service record. She has further submitted that on the basis of incorrect birth date, the petitioner had not entered into service earlier than the date of his eligibility. He, therefore, did not intend to have any undue benefit by getting his date of birth corrected in the service record. Lastly, she has submitted that considering the law laid down by the Apex Court and this Court in various decisions and the Circular issued by the respondent dated 18th February, 1994, the respondent should have accepted the application. This petition, therefore, according to her deserves to be allowed.

2.1. As against that, Mr. Pradip Bhate learned A.G.P. appearing for the respondent has submitted that at belated stage, such application cannot be entertained. Further, there is no proper proof produced by the petitioner with regard to the genuineness of the document in question namely the Extract of Birth Register. He has, therefore, submitted that this petition be dismissed.

3. Having carefully gone through the record of this petition and having carefully considered the rival submissions, it clearly appears that the petitioner though entered in the service of Gujarat State in the year 1958, has sought correction of the birth date in the service record in the year 1985. He made an application on 20th September, 1985. It is the say of the petitioner that he accidentally came across the document purporting to be an Extract of Birth Register, when he had been to village Chavad on account of his uncles's demise. It was while he was searching the house, it was found by him. This story itself is not believable. This document shows that the entry with regard to birth of the petitioner was made on 20th October, 1936 whereas he was born on 10th November, 1936. In the fifth column of the said document, his name is also shown as Kanaiyalal. This information has been given by the grand father of the petitioner as is reflected in column (9). Though this document is not produced on record, it was shown to me by Ms. Desai during the course of hearing. The petitioner

has also not produced any supporting evidence to establish the genuineness of this document. The petitioner could have very well examined before the authority and his office bearer of the office where this register is maintained or he could have filed the affidavit of such person. But that has not been done. The petitioner himself is not aware whether this document is genuine because this entry is purported to have been made in the year 1936 and, the petitioner could come across the document only in the year 1985 i.e. almost 48 years after the entry was made.

3.1. On both the occasions, the competent authority after taking into consideration all the material that was placed before it by the petitioner has come to the conclusion that the request of the petitioner cannot be accepted. This is purely a question of fact and it cannot be reappreciated by me while sitting under writ jurisdiction. Even otherwise also, the basis on which the petitioner seeks to get the date of birth corrected does not seem to be authentic document and it does not inspire confidence of this Court. This petition has, therefore, no substance and it deserved to be dismissed and it is hereby ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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